

(1991) 11 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 723 of 1982

Narasingha Charan Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-11-1991

Acts Referred:

Constitution of India, 1950 — Article 196(5)
Orissa Irrigation Act, 1959 — Section 53(3)

Citation : AIR 1992 Ori 213 : (1992) 73 CLT 504 : (1992) 1 OLR 281

Hon'ble Judges : R.C. Patnaik, J;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : S. Misra-2, B. Das, S. Mantry, R.C. Rath, Jagadish Mohanty, K. Kar, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—The petitioner has in this writ application under Article 226 of the Constitution of India assailed the Orissa Irrigation (Amendment) Rules, 1979, enhancing the basic water rate and the Rabi water rate as ultra vires Section 53(3) of the Orissa Irrigation Act, 1959 (for short, "the Act") and sought its nullification by a declaration.

2. The petitioner owns about 5 acres of irrigated land located in villages Arana, Sahu Sahi, Brahmana Bhuin and Berhampur in the district of Cuttack and has been receiving supply of water from Taladanda canal, which is an irrigation work classified as First class under the Act and the Rules framed thereunder.

3. Orissa Irrigation Act, 1959, was enacted with a view to consolidating and amending the laws relating to irrigation, assessment and levy of water rate and cess in force in different parts of the State of Orissa. The scheme of the Act indicates that the lands within the irrigable command would be liable to compulsory basic water rate which would be in the nature of a tax and it would be leviable whether water is actually utilised or not, from irrigation work. While

the scheme under Chapter IV makes provision for supply of water on payment of money, any levy under Chapter VI is correlated to actual supply.

4. "Compulsory basic water rate" has been defined to mean a flat water rate per acre of land within the culturable commanded area of an irrigation work payable to the State Government for supply of water, whether used or not, from an irrigation work for irrigation of staple cereal crop generally grown in such area. But the expression "land within culturable commanded area" shall not include any land which does not except, under circumstances specified in Section 22, actually get water from an irrigation work. "Culturable commanded area" has been defined to mean all lands under irrigable command of an irrigation work which are fit for cultivation. "Staple cereal crop" has been defined to mean any crop notified as such by the State Government and different crops may be notified in respect of different areas. Section 20 reads as under:

"Water supply to be subject to rules. All supply of water from an irrigation work shall be subject to such rules or orders as may be prescribed or issued by the State Government from time to time with respect to rates, conditions or any other matter."

Rule 23 framed u/s 53 (1) of the Act reads as under :

"Schedule of water-rate and special rates. The compulsory basic water rate, water rate and special rates for supply of water for purposes other than irrigation shall be levied at the respective rates and on the principles specified in the Schedule annexed to these rules."

In exercise of the aforesaid powers, the State Government had prescribed the basic water rate and water rates under Schedules A and B to the Orissa Irrigation Rules, 1961. In 1979, the Government proposed to enhance the rates and published the same in the official Gazette by notification dated 28-3-79 inviting objections/suggestions by 15th of April, 1979. The draft rules were finalised and as required by Section 53(3) were laid before the 7th Orissa Legislative Assembly for a period of 11 days from 12-9-79 and before the 8th Orissa Legislative Assembly on 21-9-81 for 3 days and by a Press-Note dated 8th March, 1982, the Government notified that the rates enhanced by the Amendment Rules would be effective from 24-9-81, vide Annexure-1.

5. The petitioner has assailed the validity of the Amendment Rules enhancing the rate as ultra vires Section 53(3) on the ground that the said Amendment Rules were not laid before the Orissa Legislative Assembly for a total period of 14th days comprised in one or more sessions.

6. Mr. S. Misra, the learned counsel for the petitioner has contended that the Amendment Rules of 1979 not having been laid for a total period of 14th days before the 7th Orissa Legislative Assembly lapsed on its dissolution and not having been laid before the 8th Orissa Legislative Assembly for a fresh period of 14 days, were not valid and enforceable.

Mr. R. K. Patra, the learned Additional Govt. Advocate for the State, on the other hand, has urged that the Amendment Rules were laid before the Assembly for a total period of 14 days-- 11 days from 12-9-79 and for a period of 3 days from 21-9-81 -- as required by Sub-section (3) of Section 53. The Amendment Rules did not lapse on the dissolution of the 7th Assembly but the period during which it was laid before the 7th Assembly could be clubbed with the period during which it was laid before the 8th Assembly, Sub-section (3) of Section 53 not having mandated to the contrary.

7. The case raises an important and interesting question. The Rules which were laid before the 7th Legislative Assembly on 12-9-79 were laid before it only for 11 days prior to its dissolution under Article 172(2) of the Constitution of India. Fresh General Election was held for the 8th Orissa Legislative Assembly in 1980. Its first session commenced from 30-6-80 and the draft rules were laid before it on 21-9-81 and after it was laid for three days before the 8th Legislative Assembly, the Amendment Rules were enforced with effect from 24-9-81.

Section 53(3) reads as under:--

"53(3). All rules made under this section shall be laid before the Legislative Assembly as soon as possible after they are laid for a total period of fourteen days which may be comprised in one or more sessions and shall be subject so such modifications as the Assembly may make during the said period."

8. The moot question is if the expression "one or more sessions" would be interpreted as one or more sessions of one Assembly or one session of one Assembly and another session of another Assembly. In other words, did the rules lapse upon dissolution of the Assembly before the completion of the period prescribed? or to put it differently was the period for which it was laid before the Assembly which was dissolved was of no avail, if for the whole of the prescribed period it was not laid before the dissolved Assembly?

9. Article 172(1) of the Constitution of India, so far as it is relevant provides :

"Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly."

Article 196 (3) and (5) reads as under :

"A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

XX XX XX (5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly."

The aforesaid provisions of the Constitution are referred to with a view to throwing some light in the matter of interpretation of the provisions contained in

section 53 (3) of the Act. Are the rules required to be laid for a total period of 14 days before one or more sessions of the same Legislative Assembly or the total period could comprise of the period for which it was laid in one session of one Assembly and be clubbed with another period in the session of the successor assembly. Whereas a Bill pending in the Legislature of a State does not lapse by reason of the prorogation of the Legislative merely, the bill pending before a Legislative Assembly on the dissolution of the Assembly.

10. The object, purpose and requirement; for laying the rules before the Assembly is to enable the members of the Assembly to apply their minds to the subordinate legislation, consider the same and if necessary, annul, amend or modify the same. The Legislature, therefore, intended that a reasonable period of 14 days was necessary for the members of the Assembly to apply their minds and take a decision. When the Legislature mandated that the rules are to be considered for a total period of 14 days by the Assembly, it intended that those rules are to be considered by the members of that Assembly. A successor Assembly is a different personality. It may comprise of the same members who constituted the dissolved assembly, it may comprise of totally different members. If the members of one Assembly did not have the period of 14 days in one session, the rules could be considered during the next session, persons comprising the Assembly by and large remaining the same. But a successor Assembly being a different personality, the rules have to be re-laid before it for a total period of 14 days either in one session or in more sessions of that Assembly. The doctrine of lapse which is applicable to bills under Article 196(5) is also applicable to rules unless the total period for which they are to be laid before the Assembly has been completed by the time of its dissolution. When one Assembly is dissolved and another is elected in due course, there is no continuity in the personality of the Assembly. It has been said that dissolution "passes a sponge over the parliamentary state". All business pending before it or any of its committees lapses on dissolution. No part of the records of the dissolved House can be carried over and transcribed into the records of registers of the new House. As regards bills, the learned authors said, all business pending in Lok Sabha, e.g., motions, resolutions, amendments etc., at whatever stage, lapses upon dissolution. Motion for approval or modification of statutory rules, laid on the Table of both Houses under the provisions of an Act, passed by Lok Sabha and transmitted to Rajya Sabha for concurrence and vice versa also lapses on dissolution of Lok Sabha.

The effect of dissolution of Lok Sabha in relation to statutory rules laid on the Table was discussed by the Committee of secretaries of Legislative Bodies in India at their meeting held at Hyderabad in March, 1957. It was held that in such cases the "general law of lapsing" should apply. It was stressed that the new House was a different body and no part of the records of the old House could be carried over to or written into the registers of the new House. The new House would not, therefore, be able to entertain any message or amendments communicated by the other House. (See Practice and Procedure of Parliament by

M.N. Kaul and S. L. Shakdher, 3rd Edition, page 158).

11. The purpose of laying the rules framed by delegated authorities before the Legislative Assembly, as we have said earlier, is to enable the legislators to apply their minds, consider the same and to approve, modify or disapprove the same and the Legislature in Sub-section (3) of Section 53 mandated that a period of 14 days would be the reasonable period during which application of mind, consideration and motion for annulment, modification should be done. Now let us take a hypothetical situation. Upon consideration of the rules, the members are satisfied that the rules require modification or disapproval and on the 12th day they take the decision to take steps during the next two days. But the Assembly is dissolved before any action is taken. The successor Assembly comes into being, its session commences and the rules are laid before it. If the contention of the learned counsel for the State is accepted, the total period would be complete if the rules are laid before the successor Assembly for two days. Would that be the reasonable time for the new personality, which might comprise of wholly or mostly new members, to consider and apply its mind to the rules and take steps for modification or annulment? Hence, in our view, the total period of 14 days in one or more sessions should be available to the same personality with a view to taking a decision and if before expiry of the total period of 14 days, the Assembly is dissolved, the rules are to be re-laid before the successor Assembly for a total period of 14 days comprised in one or more sessions. Any period during which it was laid before the former Assembly would be treated as wiped out, with a sponge over the legislative slate. The submission of the learned counsel for the State that the successor 8th Legislative Assembly did not take any exception to the Amendment Rules being laid before it on 21-9-81 for a period of 3 days and, therefore, it had condoned the defect, is not acceptable. It is difficult to conjecture what it would have done if the Rules had been laid for the whole period of 34 days. The provisions contained in Sub-section (3) of Section 53 is mandatory.

12. As the rules had not been laid either before 7th Assembly for a total period of 14 days comprised in one or more sessions but was laid before it only for a period of 11 days and was laid before the 8th Assembly only for a period of 3 days, we are of the view that the mandatory requirement of Section 53(3) of the Act was not satisfied. Therefore, the rules were ultra vires Sub-section (3) of Section 53 and we declare the same as ultra vires.

13. In the result, the writ application is allowed. There would be no order as to costs.

K.C. Jagadeb Roy, J.

14. I agree.